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GREGORY T. ZALECKI  
12900 HALL ROAD  
SUITE 400  
STERLING HEIGHTS, MI 48313

EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT PAPER NUMBER

1772

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/811,590

Applicant(s)

NEVISON, DALE C.H.

Examiner

Alicia Chevalier

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 8-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-11 are pending in the application, claims 8-11 are withdrawn from consideration.

#### *Election/Restrictions*

2. Applicant's election without traverse of group I, claims 1-7, in the reply filed on July 8, 2005 is acknowledged.
3. Claims 8-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 8, 2005.

#### *Drawings*

4. The drawings were received on August 6, 2004. These drawings are acceptable.

#### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Menconi et al. (U.S. Patent No. 4,436,779).

Regarding Applicant's claims 1 and 2, Menconi discloses a mat (*modular surface, title*) comprising a mat base (*module, col. 3, line 18*) having a top surface and a bottom surface; a plurality of long legs perpendicularly attached to the bottom surface of the mat base for resiliently supporting the mat base; a plurality of short legs perpendicularly attached to the bottom surface of the mat base for supporting the mat base and is deemed to modify the resiliency of the mat (*figure 7*). Also, the long legs and the short legs are deemed capable of providing a selected mat compression when a load is applied to the top surface of the mat, since the mat comprises the claimed long and short legs. The mat further comprises a plurality of ribs wherein each rib connects a pair of legs and wherein the length perpendicular to the mat of each rib is approximately the length of the legs to which it is attached, but not longer than either of the legs to which it is attached (*col. 3, line 36 and figure 3*).

The limitation "for preventing the mat from becoming embedded within a floor grating which it sits" is deemed to be a statement with regard to the intended use and is not further limiting in so far as the structure of the product is concerned. In article claims, a claimed intended use must result in a ***structural difference*** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. MPEP § 2111.02.

Regarding Applicant's claim 3, Menconi discloses a mate comprising a mat base (*module, col. 3, line 18*) having a top surface and a bottom surface; and a plurality of channels (*expansion joints, col. 4, line 4 and figure 3*) subdividing the mat top surface into mat segments, wherein each channel has a floor and a lateral wall surface and wherein the lateral wall surface has a drain opening permitting drainage from the top surface of the mat to below the bottom surface of the mat (*figures 2 and 3*).

Regarding Applicant's claim 5, Menconi discloses a mat (*modular surface, title*) comprising a mat base (*module, col. 3, line 18*) having a top surface and a bottom surface; a plurality of long legs perpendicularly attached to the bottom surface of the mat base for resiliently supporting the mat base; a plurality of short legs perpendicularly attached to the bottom surface of the mat base for supporting the mat base and is deemed to modify the resiliency of the mat (*figure 7*). Also, the long legs and the short legs are deemed capable of providing a selected mat compression when a load is applied to the top surface of the mat, since the mat comprises the claimed long and short legs. The mat further comprises a plurality of ribs wherein each rib connects a pair of legs and wherein the length perpendicular to the mat of each rib is approximately the length of the legs to which it is attached, but not longer than either of the legs to which it is attached (*col. 3, line 36 and figure 3*). The mat also comprises a plurality of channels (*expansion joints, col. 4, line 4 and figure 3*) subdividing the mat top surface into mat segments, wherein each channel has a floor and a lateral wall surface and wherein the lateral wall surface has a drain opening permitting drainage from the top surface of the mat to below the bottom surface of the mat (*figures 2 and 3*).

The limitation "for preventing the mat from becoming embedded within a floor grating which it sits" is deemed to be a statement with regard to the intended use and is not further limiting in so far as the structure of the product is concerned. In article claims, a claimed intended use must result in a **structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. MPEP § 2111.02.

7. Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Perry (U.S. Patent No. 212,497).

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Regarding Applicant's claim 3, Perry discloses a mate comprising a mat base having a top surface and a bottom surface; and a plurality of channels subdividing the mat top surface into mat segments, wherein each channel has a floor and a lateral wall surface and wherein the lateral wall surface has a drain opening permitting drainage from the top surface of the mat to below the bottom surface of the mat (*figures 1 and 2*).

8. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Van Der Pyl (U.S. Patent No. 1,619,773).

Regarding Applicant's claim 4, Van Der Pyl discloses a mat comprising a mate base having a top surface and a bottom surface, a plurality of grit trenches embedded within the top surface of the mat, wherein each grit trench has two ends and each end has a retention lip forming a dam for retaining adhesive and grit and grit bonded into the trenches by an adhesive (*col. 2, lines 58-62 and figure 2*).

9. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Vaux (U.S. Patent No. 4,727,697).

Regarding Applicant's claims 1 and 2, Vaux discloses a mat comprising a mat base having a top surface and a bottom surface; a plurality of long legs perpendicularly attached to the bottom surface of the mat base for resiliently supporting the mat base; a plurality of short legs perpendicularly attached to the bottom surface of the mat base for supporting the mat base and is deemed to modify the resiliency of the mat (*figures 3 and 4*). Also, the long legs and the short legs are deemed capable of providing a selected mat compression when a load is applied to the top surface of the mat, since the mat comprises the claimed long and short legs. The mat further comprises a plurality of ribs wherein each rib connects a pair of legs and wherein the length

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perpendicular to the mat of each rib is approximately the length of the legs to which it is attached, but not longer than either of the legs to which it is attached (*figure 5*).

The limitation “for preventing the mat from becoming embedded within a floor grating which it sits” is deemed to be a statement with regard to the intended use and is not further limiting in so far as the structure of the product is concerned. In article claims, a claimed intended use must result in a *structural difference* between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. MPEP § 2111.02.

*Claim Rejections - 35 USC § 103*

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menconi as applied above, and further in view of Van Der Pyl.

Menconi is relied upon as described above.

Menconi fails to disclose grit trenches with grit bonded in the trenches.

Van Der Pyl discloses a mat comprising a mate base having a top surface and a bottom surface, a plurality of grit trenches embedded within the top surface of the mat, wherein each grit trench has two ends and each end has a retention lip forming a dam for retaining adhesive and grit and grit bonded into the trenches by an adhesive (*col. 2, lines 58-62 and figure 2*).

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It would have been obvious to one of ordinary skill in the art at the time of the invention to add grit trenches with grit bonded in the trenches as taught by Van Der Pyl in Meconi in order to create a safety tread surface.

***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Alicia Chevalier

7/22/05